Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO *and* International Industrial Contracting Corporation and Riggers Local 575, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 7-CD-431

26 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

Upon a charge filed by the Employer 19 May 1983, the General Counsel of the National Labor Relations Board issued a complaint 18 April 1984 against the Respondent, Carpenters Local 1102 (Millwrights), alleging that the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act. Copies of the charge and complaint and notice of hearing were duly served on the parties to this proceeding.

The complaint alleges in substance that the Respondent, through its agents, violated the Act by threatening to shut down the Employer's job at the Chrysler Corporation's Outer Drive Manufacturing Center, Detroit, Michigan, about March or early April 1983 and about May 1983, and by picketing the Chrysler site from about 19 May until about 27 May 1983, with an object of forcing or requiring the Employer to assign the work of moving heavy machinery from a temporary holding point to the point of final destination, and the assembly and final installation of the machinery to its members or to employees represented by it rather than to employees who are not members of or are not represented by the Respondent. The complaint further alleges that the Board, in its 29 March 1984 Decision and Determination of Dispute,[1] which awarded the disputed work and similar work performed by the Employer in any of the Michigan counties where both Local 575, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Riggers), and Millwrights claim jurisdiction to employees represented by the Riggers, and that the Respondent, by letter dated 4 April 1984, notified the Regional Director for Region 7 that it would not comply with the Board's Decision and Determination of Dispute. On 27 April 1984 the Respondent filed its answer in which it admitted all the factual allegations of the complaint, but asserted that the Board's Determination of the Dispute was erroneous because the Board did not resolve issues of credibility and applied perfunctory criteria to reach its decision.

On 2 May 1984 the General Counsel filed a motion to transfer and continue the proceeding before the Board, for summary judgment, and for expedited handling of the aforesaid motions. The General Counsel submits, in substance, that the Respondent is solely seeking to test the validity of the Board's prior Decision and Determination of Dispute in this matter through this unfair labor practice proceeding since the Respondent's answer admits all facts necessary to establish a violation of Section 8(b)(4)(i) and (ii)(D) of the Act and raises no other issues which were not fully litigated in the prior 10(k) proceeding, and that the Respondent in its answer admits it will not comply with the Board's Decision and Determination of Dispute. On 10 May 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion for summary judgment should not be granted. The Respondent filed no response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, including the record in the underlying 10(k) proceeding,[2] the Board makes the following

Ruling on Motion for Summary Judgment

Pursuant to Section 10(k) of the Act, following a charge filed by the Employer alleging that the Respondent had violated Section 8(b)(4)(i) and (ii)(D) of the Act, a hearing was held 25 July, 17 and 18 August, and 19 and 20 September 1983. On 29 March 1984 the Baord issued a Decision and Determination of Dispute, finding that there was reasonable cause to believe that Section 8(b)(4)(D) had been violated by the Respondent and that there was no agreed-upon method for the voluntary settlement of the dispute to which all parties were bound. Concluding, therefore, that it was not precluded from making a determination of the merits of the dispute within the meaning of Section 8(b)(4)(D) and Section 10(k) of the Act, the Board decided that the employees of the Employer, who are represented by the Riggers, were entitled to the work in dispute, rather than employees represented by the Respondent.

In its answer to the complaint, the Respondent admits that it threatened and picketed the Employer with an object of forcing or requiring the Em-

[1] *Carpenters Local 1102 (International Contracting)*, 269 NLRB 593 (1984).

[2] The Board's taking of official notice of the record in the 10(k) proceeding, and reliance thereon, is well settled. *Plumbers Local 741 (Ashton Co.)*, 259 NLRB 944 fn. 2 (1982), and cases cited therein.

ployer to assign the disputed work to employees represented by it and that it notified the Regional Director for Region 7 that it would not comply with the Decision and Determination of Dispute issued 29 March 1984, but asserts that the Board's Decision and Determination of Dispute was decided erroneously.

The issues raised by the Respondent have been litigated previously in the underlying 10(k) proceeding. Furthermore, the Respondent does not offer to adduce any newly discovered or previously unavailable evidence, nor has it shown that special circumstances exist here. Accordingly, there is no issue which is properly triable in this proceeding. As all material issues have been decided previously by the Board, there are no matters requiring a hearing.[3] Accordingly, the General Counsel's Motion for Summary Judgment is granted.

I. JURISDICTION

The Employer, a Michigan corporation and a member of the Michigan Cartagemen's Association, Heavy Haulers Division,[4] maintains its principal office and place of business at 1500 Irving, Royal Oak, Michigan. The Employer is engaged in the moving and erection of heavy machinery. During the year ending 31 December 1983, which period is representative of its operations during all times material, the Employer, in the course and conduct of its business operations, had gross revenue in excess of $500,000. During the same period, the Employer performed services valued in excess of $50,000 in, and for various enterprises located in, States other than the State of Michigan.

Chrysler Corporation, a Delaware corporation, maintains its principal office and place of business at 12800 Oakland Avenue, Highland Park, Michigan, and maintains other facilities throughout the United States and Canada, including the Outer Drive Manufacturing Center, Detroit, Michigan, the facility involved in this proceeding. During the year ending 31 December 1983, which period is representative of its operations during all times material, Chrysler Corporation, in the course and conduct of its business operations, purchased goods and materials valued in excess of $1 million and caused said goods and materials to be transported to its Michigan facilities directly from points located outside the State of Michigan.

Accordingly, we find that the Employer and Chrysler Corporation are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that the Respondent and the Riggers are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Facts of the Dispute*

At all times material herein, the Respondent and the Riggers have had a jurisdictional dispute concerning the work of moving heavy machinery from a temporary holding point to the point of final destination and the assembly and final installation of the machinery on the Employer's job at the Chrysler Corporation's Outer Drive Manufacturing Center, Detroit, Michigan. About March or early April 1983 and about May 1983 the Respondent threatened to shut down the Employer's job at the Chrysler Corporation's Outer Drive Manufacturing Center, and from about 19 May to about 25 May 1983 the Respondent picketed the Employer's job at the Chrysler Corporation's Outer Drive Manufacturing Center with an object of forcing or requiring the Employer to assign the disputed work to its members or to employees represented by it. In doing so, the Respondent induced and encouraged individuals employed by the Employer, Chrysler Corporation, and by other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities or to perform services, and threatened, coerced, and restrained the Employer, Chrysler Corporation, and other persons engaged in commerce or in an industry affecting commerce with an object of forcing and requiring the Employer to assign the disputed work to the Respondent's members or to employees it represents rather than to employees represented by Riggers Local 575, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO.

B. *The Determination of the Dispute*

On 29 March 1984 the Board issued a Decision and Determination of Dispute (269 NLRB 593), finding that employees represented by the Riggers are entitled to perform the disputed work, and that the Respondent was not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force

[3] Although in its answer to the complaint the Respondent asserts that the Board's Decision and Determination of Dispute was erroneous because the Board, inter alia, did not resolve issues of credibility, the Respondent does not specify the issues of credibility to which it refers. In any event, were it appropriate to resolve credibility issues in a 10(k) proceeding, it is clear that the Board's Decision and Determination of Dispute did not require, nor was it based on, resolutions of credibility, and that a hearing is not required in the instant proceeding. See *Electrical Workers Local 3 (Mansfield Contracting Corp.)*, 206 NLRB 423, 424 fn. 4 (1973).

[4] The Michigan Cartagemen's Association, Heavy Haulers Division, is a multiemployer bargaining association which, at the time of the 10(k) hearing, represented the Employer.

or require the Employer to assign the disputed work to employees represented by it.

C. *The Respondent's Refusal to Comply*

On 4 April 1984 the Respondent's attorney, on behalf of the Respondent, wrote the Regional Director for Region 7, stating:

> Millwrights Local 1102 believes the Board's Decision and Determination of Dispute is seriously flawed and will not comply therewith. Instead, it intends to question the Decision in an appropriate Court of Appeals.

On the basis of the foregoing, and the entire record in this proceeding, we find, as described above, that the Respondent's conduct in seeking to force or require the assignment of the disputed work to its members or to employees represented by it rather than to employees represented by the Millwrights, and the Respondent's refusal to comply with the Board's Decision and Determination of Dispute, violated Section 8(b)(4)(i) and (ii)(D) of the Act.[5]

CONCLUSIONS OF LAW

By inducing or encouraging individuals employed by International Industrial Contracting Corporation, Chrysler Corporation, or any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, and by threatening, coercing, or restraining International Industrial Contracting Corporation, Chrysler Corporation, or any other persons engaged in commcerce, or in an industry affecting commerce, with an object of forcing or requiring International Industrial Contracting Corporation to assign the disputed work or similar work by International Industrial Contracting Corporation in any of the Michigan counties where both Riggers and Millwrights claim jurisdiction to employees represented by it rather than to employees represented by Riggers, and by failing and refusing to comply with the Board's Decision and Determination of Dispute, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(b)(4)(i) and (ii)(D) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Inducing or encouraging individuals employed by International Industrial Contracting Corporation, Chrysler Corporation, or any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services, or threatening, coercing, or restraining International Industrial Contracting Corporation, Chrysler Corporation, or any other persons engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require International Industrial Contracting Corporation to assign the work of moving heavy machinery from a temporary holding point to the point of final installation, and the assembly and final installation of the machinery, or similar work by International Industrial Contracting Corporation in any of the Michigan counties where both Riggers and Millwrights claim jurisdiction, to its members or to employees represented by it rather than to employees represented by Riggers Local 575, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO.

(b) Refusing to comply with the Board's Decision and Determination of Dispute as set forth at 269 NLRB 593.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business and meeting halls copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasona-

[5] *Longshoremen ILA Local 1410 (Mobile Steamship Assn.)*, 242 NLRB 807, 809 fn. 5 (1979), and cases cited therein.

[6] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ble steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 7 signed copies of such notice for posting by the Employer, if willing, in places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT induce or encourage individuals employed by International Industrial Contracting Corporation, Chrysler Corporation, or any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threaten, coerce, or restrain International Industrial Contracting Corporation, Chrysler Corporation, or any other persons engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require International Industrial Contracting Corporation to assign the work of moving heavy machinery from a temporary holding point to the point of final installation and the assembly and final installation of the machinery, at Chrysler Corporation's Outer Drive Manufacturing Center, Detroit, Michigan, or similar work by International Industrial Contracting Corporation in any of the Michigan counties where both we and Riggers Local 575, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, claim jurisdiction, to members or to employees represented by us rather than to employees represented by Riggers.

WE WILL NOT refuse to comply with the Board's Decision and Determination of Dispute as set forth at 269 NLRB 593.

MILLWRIGHTS LOCAL 1102, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO